

Ram Bachan Bind and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Aug-25-1997

Judge : N. Pandey, J.

Appeal No. : Cr. Rev. Nos. 486 and 265

Appellant : Ram Bachan Bind and ors.

Respondent : State of Bihar and ors.

Disposition : Application Dismissed.

Judgement :

N. Pandey, J.

1. Both the revision application are directed against a common order dated 26.6.1992 passed by the Judicial Magistrate, IInd Class, Jahanabad, in Tr. No. 186 of 1992, whereby in exercise of his power conferred under Section 310 of the Code of Criminal Procedure (hereinafter called 'the Code') he has summoned the petitioners to face trial under Section 376, IPC.

2. It appears, previously the policy has submitted charge-sheet under Sections 144, 323, 504, IPC against petitioners Ram Bachan Bind, Munarik Bind, Chanrik Bind, Sarju Bind, Sri Kishun Bind, Gad Gad Bind, Nawal Bind, Awadhesh Kumar and Jugeshwar Bind but no charge-sheet was submitted against petitioner Lallan

Bind. The Chief Judicial Magistrate accordingly took cognizance of the offence and summoned only those accused persons to face trial under Sections 144, 323 and 504, IPC against whom police had submitted charge-sheet, No summons was issued against petitioner Lallan Bind.

3. It appears, during the ring of the trial and after examination of certain witnesses, the leaned Magistrate was of the view that a case under Section 376, IPC was made out against the petitioners and also against petitioner Lallan Bind against whom no summons was issued. Since the offence under Section 376, IPC was trouble by a Court of Sessions, therefore, the learned Magistrate transmitted the records to the Chief Judicial Magistrate for necessary orders on commitment.

4. Learned Magistrate while contending on behalf of petitioner Lallan Bind (Cr. Rev. No. 265 of 1992) submitted that the learned Magistrate had no jurisdiction to decide the matter for issuance of summons under Section 376, IPC since he was already discharged by the Chief Judicial Magistrate. According to him, provisions under Section 319 of the Code cannot be applied with respect to an accused who was discharged at the time of taking cognizance of the case.

5. In view of the facts notice above, solitary question thus emerges for consideration is whether in a case of this nature, where the accused was discharged the learned Magistrate can have jurisdiction under Section 319, Cr PC to summon. There is no dispute that during course of hearing and examination of witnesses, the learned Magistrate has found certain materials on the basis of which the Court was of the opinion that it was necessary to summon the accused to face trial. This cannot be disputed that the scope of Section 319 of the Code, is only limited to post cognizance stage when complicity of persons other than the persons named as accused in distinguished, Reference in this regard can usefully be made to the case of Bishwanath Tato and Ors. v. The State of Bihar 1995 (2) PLJR 602 : 1994 (1) East Cr C 7. That apart, it has also to be remembered that if an accused is not sent up by the police to face trial then the order not issuing summons against such person does not amount to discharge, in the eye of law. I am reminded to a decision of the Apex Court in the case of Raghubans Dubey v. State of Bihar : 1967 CriLJ1081 , Where it has been held that there cannot be any

question of discharge when the accused was not named in the charge-sheet by the policy. Apart from the aforesaid authoritative pronouncement, this Court has also while examining the case of Bishwanath Tato and Ors. v. The State of Bihar (supra) has held that Section 319 of the Code has got full application even in a case where accused person was discharged.

6. Therefore, for the reasons stated above, in my view, there cannot be any justification to interfere with such an order.

7. So far as the petitioner of Cr. Rev. No. 265 of 1992 is concerned, learned Counsel submitted that even the learned Magistrate had found certain materials to summon him to face trial under Section 376, IPC, it was not open to him to pass an order of commitment because he was exercising only power of a 2nd Class Magistrate.

8. In my view, this submission has also got no substance because from a bare reference to the impugned order, it would appear that the learned Magistrate has merely transmitted the records of the Chief Judicial Magistrate, for commitment. Therefore, having regard to the facts notice above I find no merit in these applications. They are accordingly dismissed.

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